



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: LIN-01-251-57123 Office: Nebraska Service Center Date:

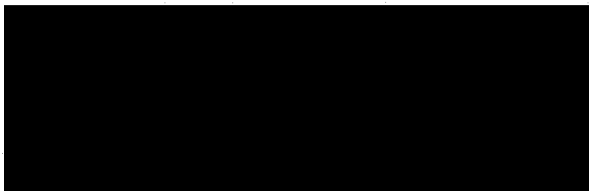
FEB 28 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a "supplier of software engineering solutions and services." It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as a "solutions consulting engineer." The director determined that the petitioner had not established that the beneficiary had been or would be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the "beneficiary is entitled to L-1B status as a specialized knowledge professional based on his intimate knowledge of company's products."

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The United States petitioner was incorporated in 1998 and states that it is a wholly-owned subsidiary of EADS Matra Datavision S.A. located in France. The petitioner declares 800 employees and gross annual revenues of approximately \$92,800,000. The petitioner seeks to employ the beneficiary for three years at an annual salary of \$50,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

8 C.F.R. 214.2(l)(1)(ii)(D) states:

Specialized Knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In support of the petition, the petitioner stated that the beneficiary's "in-depth knowledge and experience with CAD/CAM/CAE systems in general, and those of EADS Matra in particular, have made him an invaluable member of the Matra U.S. North American team."

Pursuant to a Request for Evidence dated August 30, 2001, the petitioner was requested to "[s]ubmit evidence that the beneficiary possesses special knowledge of your product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. Although the beneficiary may possess an advanced knowledge of the processes and procedures of the company, evidence must be submitted to describe and distinguish that knowledge from the knowledge possessed by others within the organization, and the industry at large. In addition, the evidence must establish that the beneficiary's duties abroad . . . and the duties in the United States, require a person with specialized knowledge."

In response to the Service's request, the petitioner stated that the beneficiary's knowledge of CATIA software and his past experience working with the automotive industry "allowed him to familiarize himself with the Petitioner's sophisticated products much more quickly than would have been the case of a design engineer who had not previously worked with some of the Petitioner's products."

The director concluded that the petitioner had not established that the beneficiary had specialized knowledge or that he would be employed in a capacity involving specialized knowledge and denied the petition on September 13, 2001.

On appeal, counsel asserts that the beneficiary's "knowledge and experience are unique to the Petitioner and its products and services."

On review, the record is not persuasive that the beneficiary has been or will be employed in a capacity involving special knowledge of the petitioner's service and its application in international markets. The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's assertion, familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.